

REMARKS

This Amendment is made in response to the Office Action dated October 14, 2008. Claims 1-4, 6-15, 17, 18, 21, 32 and 34-42 were pending in this application. By this Amendment, claims 1, 3, 8, 18, 42 and 43 have been amended to more clearly define the presently claimed invention. Claims 51 and 52 were amended to depend from other claims in response to the Examiner's rejection of these claims. Claims 6, 7 and 32 have been amended to overcome the indefiniteness rejections raised by the Examiner. Applicants have amended the Specification. Favorable reconsideration is respectfully requested.

Statement of Interview Summary

Applicants acknowledge and agree with the Examiner's Interview Summary, dated January 13, 2009, which reflects the interview between Examiner Elizabeth Houston and Applicants' representative, Kelly McCrystle. Applicants further state that the Examiner acknowledged that the correct patent number for the Lee patent is U.S. Patent No. 6,520,934.

Amendment to the Specification

Applicants have amended a paragraph appearing in the Specification in order to support some of the new terms which now appear in the pending claims. It is believed that no new matter has been added to the Specification by this amendment.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 6, 7 and 32 were rejected under 35 U.S.C. § 112, Second Paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have amended claims 6, 7 and 32 to clarify the claimed invention. Accordingly, Applicants respectfully request the Examiner to withdraw this rejection.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 42, 43 and 46-52 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,741,327 to Frantzen (the "Frantzen patent").

Applicants note that the locking marker element 70 in the Frantzen patent relies on a tab 90 including a knob 94 adapted to fit within a rounded space 62 of a receiver 60 which is formed on the stent body. The receiver 60 is formed as is described at column 8, lines 37-43 of the Frantzen patent:

Each receiver 60 is somewhat "**C-shaped**" with a rounded space 62 at a center thereof which can be accessed through a gap 63 between a first finger 64 and a second finger 67. The first finger 64 extends from a base 65 adjacent the prominence 54 to a tip 66 opposite the base 65. The second finger 67 similarly includes a base 68 adjacent the prominence 54 and a tip 69 opposite the base 68. Each finger 64, 67 **curves** slightly to form the rounded space 62 and the gap 63 extending into the rounded space 62. The rounded space 62 has a width which is greater than a width of the gap 63. [Emphasis added]

The knob 94 has a width similar to the width of the rounded space 62 and is, in turn, connected to a narrower neck 92 which takes on a shape which corresponds to the shape of the gap 63 formed by the curved fingers 64 and 67. Given this construction, both the neck 92 and the larger knob 94 are needed in order to attain the snap fit within the receiver 60. According to the Frantzen patent, "[p]referably, the neck 92 has a width similar to a width of the gap 63 of the receiver 60 and the knob 94 has a width similar to a width of the rounded space 62 in the receiver 60 (See Column 9, lines 36-38).

Applicants note that claims 42 and 43 have been amended to include the recitation of a substantially linearly extending contact edge formed on both the marker and projecting fingers. The receiver 60 disclosed in the Frantzen patent utilizes a distinctive structure, namely, a C-shaped structure formed by the curved fingers 64 and 67 to properly retain the neck 92 and knob 94 of the tab 90. The shape of the tab 90 is similar to the shaped created by this gap 63 and space 62. A substantially linearly extending

contact region, as recited in claims 42 and 43, is not disclosed in the Frantzen patent since the C-shaped receiver 60 relies on the hooked ends of the curved fingers 64 and 67 to help maintain the tab 90 within the receiver 60. For this reason alone, the Frantzen patent fails to disclose the invention of claims 42, 43 and 46-52. Applicants respectfully request the Examine to withdraw the Frantzen patent as an anticipatory reference.

In Applicants' presently claimed invention, the benefits of using a substantially linearly extending contact edge on both the marker and projecting arms allows the marker to be moved within the opening formed by the projecting arms until a sufficient length of the contact edges formed on the marker comes into contact with the contact edge located on each projecting finger. This structure allows the marker to be manufactured with less precision as it still allows the marker to be mounted within the opening formed by the projecting fingers since the end of the marker can be moved further into the notched region of the present invention until the contact edges eventually meet. This function between the knob 94 and neck 92 and the gap 63 and space 62 is neither used nor recognized in the Frantzen patent. For example, if the knob 94 is cut too large or not sufficiently rounded to match the size of the rounded space 62, the larger knob 94 will **"spread"** the curved fingers 64 and 67 away from each other, causing the gap 63 to increase thus allowing the neck 92 to come **out of contact** with the curved ends of the fingers 64 and 67. Likewise, if the neck 92 is cut too wide and the knob 94 remains the proper size, then the gap 63 will enlarge since the finger 64 and 67 would be spread further apart than normal due to the presence of the larger neck 92. The spreading of the curved fingers 64 and 67 would cause the rounded space 62 to likewise enlarge causing a space between the knob 94 and the portions of the fingers 64 and 67 which define the rounded space 62. Thus, the size and shape of the tab 90 of the Frantzen device must be quite precise or unwanted gaps can be formed between the tab 90 and openings formed by the receiver 60. Moreover, given the particular structure of the receiver 60 of the Frantzen device, there is little to no room for moving the tab 90 within the openings 62 and 63 of the receiver to possibly compensate for mismatching shapes. Applicants'

presently claimed invention thus provides the manufacturer with greater leeway in fitting the markers into the openings formed by the projecting fingers. Additionally, highly precision parts are not necessary.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-4 and 44 were rejected under 35 U.S.C. § 103(a) as being obvious over the Frantzen patent in view of U.S. Publication No. 2002/0111671 to Stenzel (the "Stenzel publication"). Claims 6, 7, 32 and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Frantzen patent in view of U.S. Patent No. 6,520,934 to Lee (the "Lee patent"). Claims 8-15, 17 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Frantzen patent in view of the Stenzel publication and in further view of U. S. Patent No. 6,503,271 to Duerig et al. (the "Duerig patent"). Claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Frantzen patent in view of the Lee patent and in further view of the Duerig patent and further evidenced by the Lee patent.

Independent claims 1 and 8 include the recitation that each projecting finger has a substantially linearly extending contact edge formed thereon which contacts a similar substantially linearly extending contact edge formed on each side of the radiopaque marker. Again, as addressed above, the Frantzen patent does not disclose this structure since it requires curved ends formed on fingers 64 and 67 to help hold the tab 90 in place. The Examiner recognizes that the Frantzen patent fails to disclose the structure in which the projecting fingers form a V-shaped opening and the marker has a V-shaped configuration. The Examiner relies on the Stenzel publication to show that locking members can take on many forms. However, Applicants note that the Stenzel publication also fails to disclose a structure in which the projecting fingers form a V-shaped opening and the marker has a V-shaped configuration.

Applicants are mindful of the statement made by the Examiner that the shape of the radiopaque markers and the corresponding space is merely one of design choice and respectfully disagree with this statement. The Frantzen patent itself recognizes that

design choice dictates that various shapes could be used to form the tab 90. However, the Frantzen patent is explicit that it is the **shape of the knob 94 and space 62** which could be **changed**. The Frantzen patent states the following at Column 9, lines 43-49:

While the **knob 94** is preferably shown as round and matching the rounded space 62, various **different matching patterns for the knob 94 and rounded space 62 could be successfully utilized. Other shapes for the knob 94 and rounded space 62** could alternatively be utilized, **so long as the knob 94 can be oriented within the rounded space 62.** [Emphasis added]

This statement appearing in the Frantzen patent teaches away from the structure of the claims at issue since this statement indicates that only the knob 94 should matched to fit within the space 62. Accordingly, the Frantzen patent still recognizes the importance of utilizing curved fingers 64 and 67 which help to hold the neck 92 and knob 94 within the receiver 60. The Frantzen patent recognizes that one could still change the shape of the knob 94 and the corresponding shape of the space 62 and still achieve a snap fit.

Accordingly, Applicants would agree that the knob 94 and space 62 used in the Frantzen device could be made to have a V-shape based upon the teachings of Frantzen. The resulting shape of the tab 90 would look like an arrow having a neck 92 and a larger sized V-shaped knob 94. However, this change in the shape of the knob 94 and space 62 still requires the presence of a neck 92 and curved fingers 64 and 67 to form a gap 63 for receiving the neck 92. As the Frantzen patent further teaches, the knob 94 would remain larger than the neck 92 so that the knob 94 will remain snapped into place within the space 62. Accordingly, Applicants submit that the teachings of Frantzen do not extend to include the mere substitution of any new shape for the marker tab 90 and space 62, the exact position which the Examiner has taken. Rather, it merely teaches that the shape of the hub 94 and space 62 could be changed.

Applicants submit that the presently defined invention reciting projecting fingers which form a V-shaped opening and include substantially linearly extending contact edges along with a marker having a V-shape and corresponding substantially linearly

extending contact edges would not have been obvious based on the teachings of the Frantzen patent alone, or in combination with any of the secondary art cited by the Examiner. Again, Applicants' presently claimed structure allows the manufacturer to assemble the markers into the opening formed by the projecting fingers with a need for less manufacturing precision. This feature is not disclosed or taught in any of the art of record. It is submitted that the particular combinations of art relied on by the Examiner would not have achieved the innovative structure defined in the pending claims. Applicants respectfully request the Examiner to withdraw all of combination of obviousness rejections raised against the pending claims.

In view of the foregoing, it is respectfully urged that all of the present claims of the application are patentable and in a condition for allowance. The undersigned attorney can be reached at (310) 824-5555 to facilitate prosecution of this application, if necessary.

In light of the above amendments and remarks, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

The commissioner is authorized to charge any deficiencies in fees or credit any overpayments to our Deposit Account No. 06-2425.

Respectfully submitted,
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